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## ARIZONA LUXURY TAX NOTICE LTN 04-2

S.B. 1353, 46th Leg., 2d Reg. Sess. [2004 Ariz. Sess. Laws 311]

August 9, 2004

On June 1, 2004, Governor Napolitano signed Senate Bill 1353 into law. The bill, aimed at curbing telephone, mail-order, and Internet sales of cigarettes, snuff, chewing tobacco, and certain other tobacco products (known as **delivery sales**) to minors and preventing the evasion of any Arizona taxes due on such sales, establishes several new documentation and reporting requirements for persons that sell and deliver tobacco products to Arizona customers.

Effective August 25, 2004, **any tobacco vendor located in or outside of Arizona that ships or delivers its goods to an Arizona customer\*** must comply with the following procedures:

1. Before shipping the tobacco products,
  - a. Obtain from the customer a certification confirming that the customer is an adult and a signed written statement certifying the address and date of birth of the individual and confirming that the individual wants to receive the sales and understands that signing another person's name is illegal, and that sales and purchases of tobacco products to minors are illegal.
  - b. Make a good faith effort to verify the information the customer provides against either a commercially available database that tracks age information or obtain a copy or image of a valid government-issued identification that gives the customer's date of birth or age.
  - c. Provide to the customer via e-mail or other method a notice disclosing that tobacco sales are: (i) illegal if made to individuals who are not adults; (ii) restricted to those individuals who provide verifiable proof of age; and (iii) taxable, explaining how the tax has been or is to be paid with respect to the delivery sale.
  - d. If the customer made the order pursuant to an Internet advertisement, accept payment for the order by a credit or debit card issued in the name of the customer or by a personal or company check of the customer only.

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\* Sales to a person who falls into either of the following two categories are **not** considered delivery sales to an Arizona customer: (a) Arizona licensed distributors, or (b) Tribes, tribal-owned enterprises, tribal members, or tribal member-owned entities purchasing the goods for resale on the tribe or tribal member's reservation.

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2. Clearly and conspicuously include on all shipping documents the following statement: "TOBACCO PRODUCTS: ARIZONA LAW PROHIBITS SHIPPING TO INDIVIDUALS UNDER THE AGE OF EIGHTEEN AND REQUIRES THE PAYMENT OF ALL APPLICABLE TAXES."
3. Use only a delivery service that can fulfill the following requirements:
  - a. Collect a signature from the person accepting delivery. Only the person who submitted the order or another adult residing at the address can sign for the delivery. The deliverer must obtain proof of the legal minimum purchase age if the signer appears to be under twenty-seven (27) years old.
  - b. Require the person accepting delivery to provide proof in the form of a valid, government-issued identification with photograph that the signer is the addressee or adult designated by the addressee.
4. Provide proof to the delivery service that it is in full compliance with tax collection and remission requirements pursuant to Arizona Revised Statutes ("A.R.S.") § 42-3227. One way to accomplish this task is to provide a written certification containing, at a minimum, the following information:
  - a. The seller's Arizona Transaction Privilege Tax or Use Tax Number and its Arizona Tobacco License Number.
  - b. A statement that the seller certifies that it is in full compliance with Arizona tax collection and remission requirements and that the information on the statement is true, accurate, and complete. Furthermore, if the statement is made by an agent or officer, that person must certify his or her authorization to execute the certificate on behalf of the seller. The signer should provide the date the document is signed and the signer's title.
5. If the vendor is not an Arizona licensed distributor, file the following documents with the Arizona Department of Revenue:
  - a. Before making any sales or shipments of tobacco products into Arizona, file a statement setting forth the vendor's name, trade name (if any), and address of the vendor's principal place of business and any other place of business.
  - b. On or before the 10<sup>th</sup> day of each calendar month, file a memorandum or copy of the invoice covering each shipment of cigarettes or tobacco products made during the previous calendar month into Arizona. The filing should include the following information
    - (i) The name and address of the individual who submitted the order.

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- (ii) The name and address of the individual who accepted delivery of the order.
- (iii) The name and address of the individual or company that accepted the customer's order.
- (iv) The name and address of the delivery service and name of the individual who actually delivers the order to the customer.
- (v) The brand or brands of tobacco products in the order.
- (vi) The quantity of each brand of tobacco product in the order.

In place of the filing described above, a vendor can choose to file documents that satisfy the federal Jenkins Act. See 15 United States Code § 376 for filing requirements.

6. Collect and remit all Arizona taxes imposed on the tobacco products. For cigarettes, tax collection and remission are not required if the seller obtains proof in the form of tax stamps or tax-exempt stamps affixed to the cigarette package, or other proof that the taxes have already been paid to the state.

**Failure to pay any tax** required in connection with a delivery sales can result in, **in addition to any other penalty**, a penalty of **five times the retail value** of the tobacco products involved.

Any person who violates the newly enacted laws can be:

- a. Charged with a **class 5 felony**,
- b. Fined the greater of **\$1,000 or five times the retail value** of the tobacco products involved for the first violation, and
- c. Fined the greater of **\$5,000 or five times the retail value** of the tobacco products for each subsequent violation.

Additionally:

- a. Filing a false age verification certification as an adult is a **class 5 felony**, and each offense carries a fine of either \$10,000 or five times the retail value of the tobacco products involved in the violation, whichever is greater.

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- b. Any **tobacco products** sold or attempted to be sold in a delivery sale that does not meet the requirements of the new laws shall be **forfeited to the state**.
- c. All **fixtures, equipment, and other materials and personal property** of any person who, with intent to defraud this state, mails or ships tobacco products in Arizona and fails to satisfy any of the requirements of the new laws shall be forfeited to Arizona.

Please visit the Arizona Department of Revenue's website at [www.revenue.state.az.us](http://www.revenue.state.az.us) for more information.